Civil Rev. Pet. No.1238/2001
M/s Jaigarh Construction (P) Ltd.
Versus Mukesh Saini & Ors.

Date of Order ::: 21/07/06

Hon'ble Mr. Justice Ajay Rastogi

Mr. D.D.Patodia, for petitioner (defendant)
Mr. Mahesh Sharma, for respondent No.1 (plaintiff)

Defendant petitioner has filed this revision petition against order dt.06/09/01 in civil suit No.27/97 whereby Additional District Judge No.3, Jaipur City decided two preliminary issues (No.6 & 7) against defendant.

Facts, in brief, relevant for adjudication of dispute arising herein, are that Smt. Sushila Devi (respondent No.2) - mother of Mukesh Saini (respondent No.1) filed an application U/s 8(2) of Hindu Minority & Guardianship Act, 1956 ***("Act, 1956"***) before District Judge, Jaipur City seeking permission for sale of land belonging to her minor son Mukesh for his benefit. The said application was allowed vide order dt.08/02/90 whereby conditional permission was granted to Smt.Sushila for sale of her son's land in question to the petitioner. An agreement to sale of suit land was executed between petitioner and Smt. Sushila on 07/12/89 and at that time, Mukesh Saini was minor son whose date of birth is 28/09/78 and who attained majority on 28/09/96. When Smt. Sushila failed to execute sale agreement, petitioner instituted civil suit No.40/92 for specific performance of sale agreement dt.07/12/89 before District Judge Jaipur City on 13/02/92. After respondent No.1 attained majority on 28/09/96, filed his additional written statement in civil suit,

raising objections and questioning sale agreement dt.07/12/89 - specific performance whereof was sought by petitioner and contemporaneously respondent NO.1 filed separate suit No.27/97 before District Judge, Jaipur City against petitioner questioning order dt.08/02/90 passed in exercise of powers U/s 8(2) of Act, 1956 and for declaring it as null & void. It was inter alia alleged in his plaint that permission was sought for by collusion with his mother at the instance of her counsel (respondent Nos.4 & 5), against whom allegations were levelled on the premise that his mother is illiterate and was not aware of consequences of seeking permission and for executing agreement dt.07/12/89.

Suit of petitioner has been decreed vide judgment dt.31/03/99 by Additional District Judge No.3, Jaipur City, against which Civil First Appeal No.263/99 has been filed which is pending before this Court.

In suit for declaration filed by respondent No.1, in all seven issues were framed. Issue Nos.6 & 7 which go to root of matter were considered as preliminary issues to be firstly decided before proceeding therein. Issue Nos.6 & 7 read as under :

> "6- आया विवादित सम्पति का मूल्य 730 हजार रूपये है और इस मूल्य पर कोर्ट फीस देय है ? { प्रतिवादी }
>
> 7- आया सक्षम न्यायालय द्वारा दी गई अनुमति के विषय में जांच करने का अधिकार इस न्यायालय को नहीं है ? { प्रतिवादी }"

Issue No.6 is as to whether court fees payable at the cost of suit property valued to Rs.730 thousands. Issue No.7 is as to whether Court has jurisdiction and authority to make inquiry with regard to permission granted by competent court. Learned trial Judge decided both the preliminary issues against defendant petitioner vide order impugned dt.06/09/01.

Hence this petition.

Counsel for petitioner confined his arguments only with regard to Issue No.7 relating to jurisdiction and has not assailed finding recorded by trial Court in respect of Issue NO.6. Counsel vehemently contends that after petitioner-attained majority, all objections were raised by way of additional written statement in suit for specific performance preferred by petitioner where evidence was led in respect of his objections; as such fresh suit at his instance was not maintainable. Counsel further submits that once permission was granted by competent court in exercise of powers U/s 8(2) of the Act, 1956, it cannot be questioned by way of separate suit merely because respondent No.1 attained majority at later stage, more so, when suit for specific performance filed by petitioner has already been decreed in his favour after adjudication of defence raised by minor son respondent no.1 and appeal against it is sub judice before this Court.

Per contra, Counsel for respondent submits that in suit filed by petitioner, subject matter whereof was agreement dt.07/12/89 - specific performance of which was sought by way of issuing decree, whereas in suit filed by respondent No.1, permission dt.08/02/90 granted in exercise of powers U/s 8(2) of Act, 1956 was sought to be declared as null & void, after attaining majority and both the suits are having different cause of action and are connected with different subject matters, which otherwise could not have been joined in one single suit and that apart, in suit for specific performance of contract dt.07/12/89 there was no issue raised and

framed by questioning cancellation of order dt.08/02/90. Counsel further submits that there is no bar under statute to try suit filed by minor son on attaining majority - in absence whereof he has right to question permission granted in violation of provisions of Act, 1956 by way of regular suit seeking declaration in independent proceedings resorting to remedy available under law for protection of his rights.

I have considered rival contentions of Counsel for parties and with their assistance, examined material on record. S.9, CPC holds jurisdiction of civil Court to try all suits of civil nature except suits of which cognizance is either expressly or implied barred. Counsel for petitioner failed to show any statutory bar provided under any Act, which debars respondent No.1 to file suit and expressly debars from filing of suit seeking declaration by respondent NO.1 as against permission granted by Court in exercise of powers U/s 8(2) of Act, 1956. It has specifically been alleged by respondent in his plaint that permission granted by trial Court was as a result of collusive acts of her counsel (respondent Nos.4 & 5) with his mother who being illiterate lady was misled by person whom she trusted and permission in instant case in no manner can be construed to be in interest of the minor (respondent No.1).

In my opinion, such question raised could be considered only by learned trial Judge only after parties lead evidence to substantiate their pleas and defence put in their respective pleadings on record after suit being duly tried in accordance with law in

competent court of jurisdiction.

So far as submission made by Counsel for petitioner that respondent No.1 had opportunity to question in suit for specific performance preferred by him and once permission granted could not be questioned by way of separate suit, in my opinion is without any substance. In suit for specific performance filed by petitioner, respondent No.1 could not have sought any declaration as to permission granted by competent court in exercise of powers U/s 8(2) of Act, 1956 vide order dt.08/02/90 and respondent No.1 has come with plea in his plaint that permission has been collusively obtained by respondent No.4 & 5 with his mother, who being an illiterate lady, which in my opinion, can be considered only after it being tried in regular trial. In absence of suit being expressly barred by any statute, there is no manifest illegality or material irregularity having occasioned while recording of the finding by trial Court in rejecting preliminary issues raised by petitioner vide order impugned and I do not find any jurisdictional error having been committed by trial Court in regard to preliminary issue No.7.

Consequently, this revision petition fails and is hereby dismissed. However, it is made clear that observations made above will in no manner come in way for adjudication of dispute against either of parties in the proceeding pending before trial Court. Record be sent back forthwith.

(Ajay Rastogi), J.

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